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September 9, 2013

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VIA ECF AND U.S. MAIL

The Honorable John G. Koeltl
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street, Suite 660
New York, New York 10007

Re: *In re Bank of America AIG Disclosure Securities Litig.*,
No. 11-cv-6678 (JGK) (S.D.N.Y.)

Dear Judge Koeltl:

I write on behalf of defendants in response to the letter from counsel for Lead Plaintiff dated August 29, 2013.

Defendants join in Lead Plaintiff's request that the Court consider the recent decision *In re Countrywide Fin. Corp. Mortgage-backed Sec. Litig.*, 2:11-ML-02265-MRP, 2013 WL 1881567 (C.D. Cal. May 6, 2013), attached to the August 29 letter. *In re Countrywide* lends further support to the arguments in favor of dismissal.

In response to Lead Plaintiff's contention that Bank of America Corporation was required to disclose in its securities filings both the identity of the claimant, and the amount that would be claimed, in AIG's yet-to-be-filed lawsuit, defendants pointed to (among many other circumstances) the fact that considerable uncertainty surrounded the question of whether AIG even had standing to assert claims concerning most of the securities that it eventually included in its lawsuit – securities that AIG had transferred to the Federal Reserve Bank of New York

("FRBNY") in connection with its government bail-out. See *Defendants' Memorandum of Law in Support of Motion to Dismiss the Second Amended Complaint or in the Alternative to Strike Portions Thereof*, filed December 6, 2012 (Docket No. 76) at 16; *Reply in Support of Motion to Dismiss the Second Amended Complaint or in the Alternative to Strike Portions Thereof*, filed Feb. 19, 2013 (Docket No. 82) at 5. Defendants also pointed out that even in hindsight, long after AIG filed its lawsuit, the court presiding over that lawsuit had dismissed some of AIG's claims, and that motions to dismiss others were pending.

In re Countrywide (a decision rendered in AIG's lawsuit) confirms those observations. In that decision, the court dismissed AIG's claims for oral misrepresentations, dismissed AIG's claim for negligent misrepresentation, narrowed the subject matter of AIG's claims based on alleged written misrepresentations, and reiterated its earlier dismissal with prejudice of AIG's federal claims. 2013 WL 1881567 at *16, *19, *20 and *3 n. 4. On the question of whether AIG even had standing to bring claims related to the securities it had transferred to the FRBNY, the court found that AIG's Asset Purchase Agreement ("APA") with the FRBNY was ambiguous with respect to whether AIG had retained the right to bring tort claims, and that both AIG's and the defendants' "interpretations [of the APA] are reasonable." *Id.* at *9. After reviewing extrinsic evidence offered by the parties after limited discovery, the court ruled that "AIG has provided sufficient information to deny Defendants' motion to dismiss" for lack of standing, but that "Defendants are free to continue discovery on the APA, and free to move for summary judgment or seek a ruling at trial that AIG does not own these tort claims." *Id.* at *13.

Even in hindsight, after two years of litigation concerning AIG's tort claims, the size and scope of those claims remain uncertain. It was not securities fraud for Bank of America Corporation to fail to predict and quantify in its financial reports, before AIG even filed suit, the claims AIG might bring.

Respectfully submitted,

George M. Garvey /NAN

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